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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with WGR Southwest, Inc., of Lodi, for Storm Drainage Permit Compliance Inspections for Wet Season Construction Inspection

MEETING DATE: May 16, 2007

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a professional services agreement with WGR Southwest, Inc., of Lodi, for Storm Drainage Permit Compliance Inspections for wet season construction inspections.

BACKGROUND INFORMATION: The State Water Resource Control Board issued to the City of Lodi Permit WDID No. 5B39NP00028 that governs the discharge of storm water runoff. A condition of that permit requires that regular wet season inspections of construction site best management practices (BMP's) be performed for all regulated construction sites. The wet season is defined as October 1 through April 15. We have attempted to perform these inspections using existing staff, but the State has made it clear that more inspections and improved records of inspections are expected. Staff recommends that WGR Southwest, Inc., of Lodi, be retained under a professional services agreement to conduct the required inspections. That agreement and accompanying scope of services is provided as Attachment A.

The following justification is provided supporting this staff recommendation.

1. WGR Southwest, Inc., is a local firm with expertise in this area of specialty inspections and is providing similar services to other agencies in the region.
2. Contracting with an outside firm obviates the need to add staff to provide seasonal services to the community.
3. Inspection reports, site photos, compliance history and consistent enforcement of the permit regulations will assure permit compliance by the City.

Storm Drainage Permit Compliance Inspections are a new service to be provided by the City. On April 18, 2007, City Council conducted a public hearing and adopted new fees to cover these services.

The contract term is not limited but can be terminated by the City by submitting at least ten days notice to the Consultant. From time to time, the unit cost basis for the scope of work items will have to be amended to reflect the Consultant's labor and materials cost escalation. These changes will be brought to the Council for approval.

FISCAL IMPACT: The cost of the inspection services will be offset by revenues from the Storm Drainage Permit Compliance Inspection Fees.

FUNDING AVAILABLE: Not applicable.

Richard C. Prima, Jr.
Public Works Director

Prepared by F. Wally Sandelin, City Engineer/Deputy Public Works Director
RCP/FWS/pmf
Attachment

APPROVED: _____
Blair King, City Manager

AGREEMENT FOR CONSULTING SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and WGR SOUTHWEST, INC., (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the conceptual design services required in accordance with attached scope of services, Exhibit A.

CITY wishes to enter into an agreement with CONSULTANT for Construction Inspection Program project (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONSULTANT, for the benefit and at the direction of CITY, shall perform the scope of services as set forth in Exhibit A, attached and incorporated by this reference.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work within ten (10) days of executing this Agreement, and complete work under this Agreement based on a mutually agreed upon timeline.

CONSULTANT shall submit to CITY one reproducible set of the final report product and electronic file(s) for same, and other project deliverables as indicated in the attached project scope of services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff or agents to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONSULTANT shall attend meetings as indicated in the Scope of Services, Exhibit A.

Section 2.4 Staffing

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The scope of services shall be performed by CONSULTANT, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel in CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents that it is prepared to and can perform all services within the scope of services specified in Exhibit A. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals.

Section 2.5 Subcontracts

CITY acknowledges that CONSULTANT will not subcontract any portions of the scope of services.

ARTICLE 3 COMPENSATION

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall conform to the provisions of Fee Proposal, attached as a portion of Exhibit A.

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONSULTANT shall submit invoices for completed work on a monthly basis, providing, without limitation, details as to amount of hours, individual performing said

work, hourly rate, and indicating to what aspect of the scope of services said work is attributable.

Section 3.3 Costs

The fees shown on Exhibit A include all reimbursable costs required for the performance of the individual work tasks by CONSULTANT and/or subconsultant and references to reimbursable costs located on any fee schedules shall not apply. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved by CITY.

CONSULTANT charge rates are attached and incorporated with Exhibit A. The charge rates for CONSULTANT shall remain in effect and unchanged for the duration of the Project unless approved by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4 MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any subconsultants on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 Responsibility for Damage

CONSULTANT shall indemnify and save harmless the City of Lodi, the City Council, elected and appointed Boards, Commissions, all officers and employees or agent from any suits, claims or actions brought by any person or persons for or on account of any injuries or damages sustained or arising from the services performed in this Agreement but only to the extent caused by the negligent acts, errors or omissions of the consultant and except those injuries or damages arising out of the active negligence of the City of Lodi or its agents, officers or agents.

Section 4.3 No Personal Liability

Neither the City Council, the City Engineer, nor any other officer or authorized assistant or agent or employee shall be personally responsible for any liability arising under this Agreement.

Section 4.4 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work prior to final acceptance, except as expressly provided herein.

Section 4.5 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as listed below. These insurance policies shall protect CONSULTANT and any subcontractor performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from CONSULTANT'S operations under this Agreement, whether such operations be by CONSULTANT or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

1. COMPREHENSIVE GENERAL LIABILITY

\$1,000,000 Bodily Injury -

Ea. Occurrence/Aggregate

\$1,000,000 Property Damage -

Ea. Occurrence/Aggregate

or

\$1,000,000 Combined Single Limits

2. COMPREHENSIVE AUTOMOBILE LIABILITY

\$1,000,000 Bodily Injury - Ea. Person

\$1,000,000 Bodily Injury - Ea. Occurrence

\$1,000,000 Property Damage - Ea. Occurrence

or

\$1,000,000 Combined Single Limits

NOTE: CONSULTANT agrees and stipulates that any insurance coverage provided to CITY shall provide for a claims period following termination of coverage.

A copy of the certificate of insurance with the following endorsements shall be furnished to CITY:

(a) Additional Named Insured Endorsement

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents and Employees as additional named insureds insofar as work performed by the insured under written Agreement with CITY. (This endorsement shall be on a form furnished to CITY and shall be included with CONSULTANT'S policies.)

(b) Primary Insurance Endorsement

Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

(c) Severability of Interest Clause

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.

(d) Notice of Cancellation or Change in Coverage Endorsement

This policy may not be canceled by the company without 30 days' prior written notice of such cancellation to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA 95241.

(e) CONSULTANT agrees and stipulates that any insurance coverage provided to CITY shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

"Claims made" coverage requiring the insureds to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

Section 4.6 Worker's Compensation Insurance

CONSULTANT shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all of CONSULTANT'S employees employed at the site of the project and, if any work is sublet, CONSULTANT shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the CONSULTANT. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the Worker's Compensation Statute, CONSULTANT shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA 95241.

Section 4.7 Attorney's Fees

In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the court.

Section 4.8 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.9 Notices

Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is personally served or sent by certified mail or express or overnight delivery, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 Richard C. Prima, Jr., Public Works Director
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910

To CONSULTANT: _____

Section 4.10 Cooperation of CITY

CITY shall cooperate fully in a timely manner in providing relevant information that it has at its disposal.

Section 4.11 CONSULTANT is Not an Employee of CITY

It is understood that CONSULTANT is not acting hereunder in any manner as an employee of CITY, but solely under this Agreement as an independent contractor.

Section 4.12 Termination

CITY may terminate this Agreement by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit A to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

Section 4.13 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.14 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent.

Section 4.15 Integration and Modification

This Agreement represents the entire integrated Agreement between CONSULTANT and CITY; supersedes all prior negotiations, representations, or Agreements, whether written or oral, between the parties; and may be amended only by written instrument signed by CONSULTANT and CITY.

Section 4.16 Applicable Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any court proceeding brought under this Agreement will be with the San Joaquin County Superior Court.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer tapes or cards, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared for this project, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during regular business hours. Upon termination or completion, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were prepared.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

By _____
RANDI JOHL
CITY CLERK

By _____
BLAIR KING
CITY MANAGER

APPROVED AS TO FORM:

Dated: _____

By  _____
D. STEPHEN SCHWABAUER
CITY ATTORNEY

By: _____

Its: _____



Southwest, Inc.

December 15, 2006

Mr. George Bradley
City of Lodi
Public Works Department
1331 South Ham Lane
Lodi, CA 95242-3995

RE: Proposed Scope of Work for the 2007
Construction Inspection Program

Dear Mr. Bradley,

WGR Southwest, Inc. (WGR) is pleased to provide the City of Lodi with this proposal and scope of work to perform the City of Lodi's Construction Inspection Program. The following is the scope of work that we are proposing

- **Construction Inspections (Monthly Inspections)** – These inspections will be performed at all active construction sites in the City of Lodi on a monthly basis. The inspection will consist of a precursory review of the SWPPP at the site, an inspection of the construction site and its BMPs, completion of a compliance checklist, review of the inspection findings with the site construction supervisor, and preparation of an internal report and other supporting documentation for your Department. If the City desires, we can also issue a Notice of Violation (NOV) as appropriate.
- **Construction Inspections (Follow-up Visits)** – Follow-up inspections will be performed where significant compliance deficiencies were identified during the monthly visit that require follow up sooner than the next monthly inspection. We will complete another compliance checklist, review the inspection findings with the site supervisor, and prepare an internal report and other supporting documentation for your Department. If the City desires, we can also issue a Notice of Violation (NOV) as appropriate.
- **Monthly Compliance Checks** – As an option and additional service to the City's construction storm water program, WGR proposes to perform a monthly compliance check of portions of the City where development or construction activities are likely to be occurring. The compliance check will involve driving around looking for construction sites that are either not complying with their

General Permit/SWPPP or have not submitted a NOI. We have built into our proposed rate four hours to do this on a monthly basis. You can either have us select our own areas to tour, which will be done in a systematic way to cover the city over a 2 - 3 month period or you can assign certain areas to review based on historic problems, amount of construction activity, or water quality data.

- **Storm Water Construction Training Materials** – To complement the inspection program, WGR proposes to provide a storm water training DVD and educational brochures to the construction supervisor (or site contact) on our first visit at each of the sites that we inspect. The training DVDs that are currently available include “*BMP Roundup*”, which addresses erosion and sedimentation issues; or “*Extreme BMP Makeover*”, which addresses BMPs for construction activity including concrete washout, concrete cutting, and equipment maintenance. We have plans to create a new training DVD in 2007 that will provide information for site supervisors on performing the General Permit required inspections of their site. We will customize these DVDs to include information about contacting your department for more information. The brochures will be a companion to the DVD.

Our proposed cost estimate is based on the following project approach:

Project Setup:

Prior to beginning the field inspections, WGR will meet with your staff to kickoff the project and to refine the goals and protocols for performing the inspections and training. During this preparation time, a general schedule based on a geographic layout of the facilities to visit will be prepared. We will need your input to identify the sites requiring inspections, but we will also download the list of active Construction General Permittees from the State Water Board’s website and compare it to your list. We will prepare an inspection protocol and checklist or if you have one that you have been using and would like to continue to use, we can review that one. WGR will maintain a master spreadsheet that will list all of the facilities requiring an inspection and other pertinent data. The spreadsheet will be used to track the inspection program progress, summarize the results of the visits, and itemize any follow up action that becomes necessary. The spreadsheet will be used to communicate information to the City of Lodi during the inspection period. We estimate that approximately 3 days will be necessary to adequately prepare for the inspections and to create the supporting documents and files.

Project Training:

WGR will take all necessary steps to assure that the inspections are performed by qualified and trained individuals. We will utilize field inspectors who have been trained on the appropriate use of Best Management Practices (BMPs) at construction sites. We will assign a project manager to the inspection program who has extensive storm water regulatory and BMP experience. We have also included project management time to assist the field inspectors with issues that may arise during the inspections. We would like to suggest that all of our inspectors perform an initial inspection with your staff to make sure that our approach is consistent with your expectations.

Project Implementation:

WGR will perform the field inspections in accordance with the protocols and guidance developed during the project setup phase. We plan on performing an average of four inspections per day. Based on past experience, we have found that the average inspection duration for construction sites requires approximately 1.25 to 1.50 hours for first time inspections, including field time and report preparation. The field inspectors will weekly establish a specific schedule based on the general schedule and will route his/her course of inspections in the most expeditious manner. We feel construction inspections are best performed without advance notice to the party being inspected, so we are not proposing to contact them ahead of time. Each construction site will be inspected using the checklist and following the written protocol. The inspector will take digital photographs of the site and any storm water-related concerns. The inspector will request to review a copy of the SWPPP and will photograph a copy of the site map from that plan to include with the inspection report. The training materials (provided by the City of Lodi or by WGR as described above) will be given to the site contact along with a copy of the completed checklist. By the end of each day, the inspector will complete the inspection report on the laptop computer and will download the photographs into the report. The reports and completed checklists will be provided to the City of Lodi as hard copies and on a compact disc with a copy of the updated inspection spreadsheet on a frequency of your choosing.

Project Wrap Up:

When the project is complete, WGR will provide the City of Lodi with a final report of the inspection activities and results. All information will be transferred to the City electronically and hard copies can be provided as specifically requested by the City. For project closure, we will schedule a meeting to discuss the inspection / training program results and to identify areas for improvement for future rounds of inspections and training.

Project Cost:

WGR proposes to perform the above scope of work on a unit cost basis:

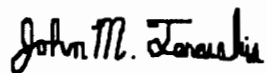
Monthly Construction Inspections (First Time Inspection).....	\$125/location
Monthly Construction Inspections (Subsequent Months)	\$95/inspection
Follow-up Construction Inspections (Subsequent Months).....	\$95/inspection
Monthly Compliance Checks	\$325/month
DVD and Training Brochure (optional added cost to the 1st Time Inspect.)	\$18/location

Project Schedule:

We can begin field inspections within five business days of receiving authorization from you to proceed. Currently, there appears to be approximately 23 active construction sites having General Permits in Lodi, which will take about a week to perform.

We thank you for this opportunity to serve you and we look forward to working with the City of Lodi on this project. If I can answer any questions concerning our proposal, please do not hesitate to call me or to schedule another meeting to discuss the proposed scope of work.

Respectfully,
WGR Southwest, Inc.

A handwritten signature in black ink that reads "John M. Teravskis". The signature is written in a cursive, flowing style.

John M. Teravskis
Compliance Specialist

RESOLUTION NO. 2007-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
PROFESSIONAL SERVICES AGREEMENT WITH WGR
SOUTHWEST, INC., FOR STORM DRAINAGE PERMIT
COMPLIANCE INSPECTIONS

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WHEREAS, the State Water Resources Control Board issued to the City of Lodi Permit WDID No. 5B39NP00028 that governs the discharge of storm water runoff; and

WHEREAS, a condition of that permit requires that regular wet season inspections (October 1 through April 15) of construction site best management practices (BMP's) be performed for all regulated construction sites; and

WHEREAS, the Public Works Department has attempted to perform these inspections using existing staff, but the State has made it clear that more inspections and improved records of inspections is expected, and therefore staff recommends that WGR Southwest, Inc., be retained under a professional services agreement to conduct the required inspections.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Professional Services Agreement with WGR Southwest, Inc., of Lodi, California for Storm Drainage Permit Compliance Inspections to begin in October 2007.

Dated: May 16, 2007

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I hereby certify that Resolution No. 2007-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 16, 2007, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2007-_____